



IN THE MATTER OF:

COMPLAINANT,

AND

**MERCY HOSPITAL AND MEDICAL
CENTER,**

RESPONDENT.

CHARGE NO. 2002CF2826
ALS NO. 12218

On October 9th, 2003, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Isaac U. Peterson. The complaint alleged that Respondent, Mercy Hospital and Medical Center, placed Complainant on its “Do Not Recall” list in *retaliation* for his opposition to sexual harassment in violation of the Illinois Human Rights Act, 775 ILCS §6-101(A).

This matter is presently before me pursuant to *Respondent's Motion to Dismiss for Want of Prosecution*, filed with the Commission on April 26th, 2004. Although Respondent's motion was properly served upon Complainant's counsel of record, Complainant has failed to file any written *Response* thereto. In lieu of a Reply, on May 28th, 2004, Respondent filed a pleading entitled *Respondent's Supplement to its Motion to Dismiss for Want of Prosecution*. The matter is now ready for decision.

FINDINGS OF FACT

1. On October 9th, 2003, the Illinois Department of Human Rights filed a Complaint of Civil Rights Violation with the Illinois Human Rights Commission on behalf of Isaac U. Peterson.
2. On November 10th, 2003, Respondent, Mercy Hospital and Medical Center, filed its Verified Answer to the Complaint of Civil Rights Violation.
3. On November 18th, 2003, both Complainant and Respondent appeared through counsel for an initial status hearing before former Administrative Law Judge William H. Hall IV.
4. On November 18th, 2003, Judge Hall ordered the parties to serve initial discovery by December 18th, 2003 and to file proof of service with the Commission.
5. On December 5th, 2003, Respondent filed its Certificate of Service for *Respondent's First Request For Production of Documents* with the Commission.
6. On January 20th, 2004, both parties appeared before Administrative Law Judge Mariette Lindt for a scheduled status hearing. On that date, Judge Lindt granted Complainant's oral motion for an extension of time to serve initial discovery, specifically, to January 28th, 2004. On that same date, Judge Lindt also extended the time within which all parties were to respond to initial discovery, specifically, to February 25th, 2004.
7. On February 10th, 2004, Respondent filed its Certificate of Service for *Respondent's First Set of Interrogatories to Complainant* with the Commission.
8. On March 16th, 2004, both parties appeared through counsel for a scheduled status hearing before Judge Lindt. On that date, Judge Lindt ordered Complainant to respond to Respondent's Request for Production of Documents, as well as Interrogatories, on or before April 20th, 2004 or risk the imposition of sanctions. The parties were also ordered to appear for a discovery status hearing on April 20th, 2004.
9. On April 20th, 2004, Respondent appeared for discovery status and

Complainant failed to appear. On that date, Respondent was granted leave to file a Motion to Dismiss for Want of Prosecution on or before May 5th, 2004. Complainant was ordered to file a written response to that motion on or before May 17th, 2004.

10. On April 26th, 2004, Respondent filed its *Motion to Dismiss for Want of Prosecution* and its memorandum in support thereof.

11. As of the date of this Recommended Order and Decision, Complainant has failed to file a *Response* to Respondent's motion to dismiss.

12. On May 28th, 2004, Respondent filed its *Supplement to its Motion to Dismiss for Want of Prosecution*. Respondent filed this pleading in lieu of a *Reply* since Complainant failed to file a *Response*.

13. As of the date of this Recommended Order and Decision, Complainant has failed to propound discovery upon Respondent and has failed to answer any of Respondent's discovery.

CONCLUSIONS OF LAW

1. Complainant's failure to obey this tribunal's written orders with regard to discovery deadlines has unreasonably delayed the proceedings in this matter. 56 Ill. Admin. Code Part 5300.750(e).

2. Complainant's failure to obey this tribunal's written order to appear for a discovery status hearing has unreasonably delayed the proceedings in this matter. 56 Ill. Admin. Code Part 5300.750(e).

3. Complainant's failure to respond to Respondent's *Motion to Dismiss for Want of Prosecution* has unreasonably delayed the proceedings in this matter. 56 Ill. Admin. Code Part 5300.750(e).

4. This tribunal is under no obligation or duty to search the record to find

reasons to deny a motion. If a motion appears valid on its face, and if the party opposing the motion cannot tell this tribunal the reasons why the motion should not be granted, the motion will be granted. *Jones and Burlington Railroad*, 25 Ill. H.R.C. Rep. 101 (1986).

DETERMINATION

Respondent's *Motion to Dismiss for Want of Prosecution* should be granted and the underlying complaint dismissed with prejudice due to Complainant's unreasonable conduct in this case. In addition, Respondent's motion should be granted and the underlying complaint dismissed with prejudice because Complainant has failed to respond to a dispositive motion which has been pending for several months.

DISCUSSION

Complainant has unreasonably delayed these proceedings by his repeated failure to comply with the Administrative Law Judge's orders with regard to serving and responding to discovery. In addition, without explanation to opposing counsel or a request for a continuance from the Administrative Law Judge, Complainant simply failed to appear for a scheduled discovery status hearing on April 20th, 2004. Complainant has now further delayed the process by failing to respond to a dispositive motion filed by Respondent on April 26th, 2004. Although Complainant was given until May 17th, 2004 to file his response, as of the date of this Recommended Order and Decision, Complainant has still not responded to Respondent's motion to dismiss. No doubt, Complainant has unreasonably delayed these proceedings and it appears that Complainant has simply abandoned his claim.

Finally, this tribunal is under no obligation to search the record further to find reasons to deny a motion. If a motion appears valid on its face, and if opposing counsel

cannot tell this tribunal why the motion should not be granted, the motion will be granted.

Jones and Burlington Northern Railroad, 25 Ill. H.R.C. Rep. 101 (1986).

RECOMMENDATION

Based upon the above findings of fact and conclusions of law, I recommend that the Illinois Human Rights Commission grant Respondent's *Motion to Dismiss for Want of Prosecution*. I further recommend that the complaint, together with the underlying charge number 2002CF2826, be dismissed with prejudice.

ENTERED: July 1st, 2004

HUMAN RIGHTS COMMISSION

**MARIETTE LINDT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**